

CHAPTER 20.93

MODIFICATION PERMITS

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20.93.010 Purpose

This Chapter provides administrative relief through a Modification Permit for certain development proposals where there is a practical difficulty or physical hardship. This article achieves the purposes of this code by establishing procedures for approval, conditional approval and disapproval for a Modification Permit. Additionally, this Chapter establishes procedures for the administration of minor discretionary items where the authority is assigned to the Zoning Administrator by the individual chapters of the Municipal Code or by action of the Planning Commission or City Council.

20.93.015 Authority

- A. Modification Permits. The Zoning Administrator shall approve, conditionally approve, or disapprove applications for Modification Permits relating to the following code provisions, subject to the submitted application, plans, materials, and testimony and findings in Section 20.93.030:
1. Required building setbacks in front, side or rear yards;
 2. Heights of walls, hedges or fences;
 3. Distances between buildings;
 4. Area, number and height of signs not requiring an exception permit or limited by Planned Community District regulations;

5. Roof signs and off-site signs in accordance with Chapter 20.67;
 6. Structural appurtenances or projections which encroach into front, side or rear yards;
 7. Location of accessory buildings on a site; the construction or installation of chimneys, vents, rooftop architectural features and solar equipment in excess of permitted height limits;
 8. Size or location of parking spaces or access to parking spaces;
 9. Swimming pool and swimming pool equipment encroachments;
 10. Roof parking of automobiles in nonresidential districts;
 11. Minor modifications and improvements to nonconforming buildings;
- B. Other Applications. The Zoning Administrator may approve, conditionally approve, or disapprove the following applications, subject to the submitted application, plans, materials, and testimony and applicable findings in the referenced sections of the Municipal Code:
1. Lot line adjustments, in accordance with Chapter 19.76 of Title 19 (*Subdivision Code*);
 2. Tentative parcel maps, in accordance with Chapter 19.12 of Title 19 (*Subdivision Code*);
 3. Condominium conversions involving four or less units, via approval of a tentative parcel map in accordance with Chapter 20.83 and Title 19 (*Subdivision Code*); and
 4. Such items as may be subsequently set forth by the Planning Commission resolution, subject to a confirming resolution by the City Council. The Zoning Administrator shall also pass upon all requests to extend existing use permits which have been approved by the Planning Commission and exercised by the applicant.

20.93.020 Application for a Modification Permit

- A. Procedure. An application for a modification permit shall be filed and processed in a manner consistent with the requirements contained in Chapter 20.90: Application Filing and Fees.

- B. Required Plans and Materials. An application for a modification permit shall be accompanied by the following:
1. Plot plans showing all property lines, structures, parking, driveways, other major improvements or facilities and landscaped areas.
 2. Elevations of all proposed structures.
 3. Other plans such as floor plans as may be required by the Planning Director to assure a proper consideration of the application.
 4. In the case of a lot line adjustment, the materials described in Chapter 19.76 of Title 19 (*Subdivision Code*).
 5. In the case of a tentative parcel map, the map and other materials described in Title 19 (*Subdivision Code*).

20.93.025 Notice and Public Hearing

- A. Tentative Parcel Maps. Notwithstanding other provisions of this Section, notice and hearing procedures for tentative parcel maps shall be as specified in Chapter 19.08 of Title 19 (*Subdivision Code*).
- B. Time of Hearing. Upon receipt of a complete application, a time and place for a public hearing shall be scheduled according to the provisions set forth in Chapter 20.90.
- C. Required Notice.
1. Mailed or Delivered Notice.
 - a. Residential Districts. At least 10 days prior to the hearing, notice shall be mailed to the applicant and all owners of property within 300 feet of the boundaries of the site, as shown on the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses. It shall be the responsibility of the applicant to obtain and provide to the City the names and addresses of owners as required by this section.
 - b. Nonresidential Districts. At least 10 days prior to the hearing, notice shall be mailed to the applicant and all owners of property within 300 feet, excluding intervening rights-of-way and waterways, of the boundaries of the site, as shown on the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses.

It shall be the responsibility of the applicant to obtain and provide to the City the names and addresses of owners as required by this section.

2. Posted Notice. Notice shall be posted in not less than 2 conspicuous places on or close to the property at least 10 days prior to the hearing.

D. Contents of Notice. The notice of public hearing shall contain:

1. A description of the location of the project site and the purpose of the application;
2. A statement of the time, place, and purpose of the public hearing;
3. A reference to application materials on file for detailed information;
4. A statement that any interested person or authorized agent may appear and be heard.

E. Continuance. Upon the date set for a public hearing before the Zoning Administrator, the Zoning Administrator may continue the hearing to another date without giving further notice thereof if the date of the continued hearing is announced in open meeting.

20.93.030 Required Findings

The Zoning Administrator may approve or conditionally approve a modification permit if, on the basis of the application, plans, materials, and testimony submitted, the Zoning Administrator finds all of the following:

- A. The granting of the application is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.
- B. The requested modification will be compatible with existing development in the neighborhood.
- C. The granting of such an application will not adversely affect the health or safety of persons residing or working in the neighborhood of the property and will not be detrimental to the general welfare or injurious to property or improvements in the neighborhood.

20.93.035 Duties of the Zoning Administrator

- A. Investigation. The Zoning Administrator shall investigate each application to assure that the proposal is consistent with the intent and purpose of this chapter, all applicable regulations and policies, and sound planning practices. The Zoning Administrator shall refer each application to the Building Department and Public Works Department, and to other city departments as needed. Each department shall make written recommendations to the Zoning Administrator.
- B. Rendering of Decision. After the conclusion of the hearing on any application for a modification permit, the Zoning Administrator shall render a decision within 15 days unless both the applicant and the Zoning Administrator consent to a later date.

When addressing the finding in Section 20.93.030(A), the Zoning Administrator may consider the physical aspects of the property and/or improvements and their relationship to adjacent properties.

In addressing the finding in Section 20.93.030 (B), the Zoning Administrator may consider the sum of qualities that distinguish the neighborhood from other areas within the City. However, the Zoning Administrator may only consider such characteristics as they relate to direct impact of the proposed modification on the neighborhood's character and not development rights that would otherwise be enjoyed without the Modification Permit.

In addressing the finding in Section 20.93.030 (C), the Zoning Administrator may consider the potential adverse impacts on persons or property in the vicinity. These include, but are not limited to, modifications that would significantly interfere with provision of adequate air and light on an adjacent property, adversely impact use of a public right-of-way, impede access by public safety personnel, result in excessive noise, vibration, dust, odors, glare, or electromagnetic interference, interfere with safe vehicular sight distances, or result in a substantial invasion of privacy.

- C. Referral to Planning Commission. In the event the Zoning Administrator determines that an application should properly be heard by the Planning Commission, the Zoning Administrator may refer the matter to the Planning Commission for hearing and original determination on the merits. The procedure for notice and hearings held by the Planning Commission on such applications shall be in accordance with the same provisions as set forth in this chapter.
- D. Administrative Act. The granting of any modification permit, when conforming to the provisions of this code, is hereby declared to be an administrative function, the authority and responsibility for performing which is imposed upon the Zoning Administrator. The action thereon by the Zoning Administrator shall be construed as administrative acts performed for the purpose of assuring that the intent and purpose of this code shall apply in special cases, as provided in this section, and shall not be

construed as amendments to the provisions of this code or the districting map of the City.

- E. Meetings. The Zoning Administrator shall hold at least one regular meeting each month and may hold special meetings as necessary.

20.93.040 Conditions of Approval

The Zoning Administrator may impose such conditions in connection with the granting of a modification permit as they deem necessary to secure the purposes of this code and may require guarantees and evidence that such conditions are being or will be complied with.

20.93.045 Effective Date

No permit or license shall be issued for any use or property modification until the decision shall have become final by reason of the expiration of time to make an appeal, which for purposes of modification permits shall be within 14 calendar days after the date of the Zoning Administrator's decision. In the event an appeal is filed, the modification permit shall not become effective unless and until a decision is made by the Planning Commission on such appeal, under the provisions of Chapter 20.95. No permit or license shall be issued for any use or property modification until the decision shall have become final by reason of the expiration of time to make an appeal.

20.93.050 Expiration, Time Extension, Violation, Discontinuance, and Revocation

- A. Expiration. Any modification permit granted in accordance with the terms of this code shall expire within 24 months from the effective date of approval or at an alternative time specified as a condition of approval unless:
1. A grading permit has been issued and grading has been substantially completed; or
 2. A building permit has been issued and construction has commenced; or
 3. A certificate of occupancy has been issued; or
 4. The use is established; or
 5. A time extension has been granted.

In cases where a coastal permit is required, the time period shall not begin until the effective date of approval of the coastal permit.

- B. Time Extension. The Planning Director may grant a time extension for a modification permit for a period or periods not to exceed 3 years. An application for a time extension shall be made in writing to the Planning Director no less than 30 days or more than 90 days prior to the expiration date.
- C. Violation of terms. Any modification permit granted in accordance with the terms of this code may be revoked if any of the conditions or terms of such modification permit are violated, or if any law or ordinance is violated in connection therewith.
- D. Discontinuance. A modification permit shall lapse if the exercise of rights granted by it is discontinued for 180 consecutive days.
- E. Revocation. Procedures for revocation shall be as prescribed by Chapter 20.96: Enforcement.

20.93.055 Amendments and New Applications

- A. Amendments. A request for changes in conditions of approval of a modification permit, or a change to plans that would affect a condition of approval shall be treated as a new application. The Planning Director may waive the requirement for a new application if the changes are minor, do not involve substantial alterations or addition to the plan or the conditions of approval, and are consistent with the intent of the original approval.
- B. New Applications. If an application for a modification permit is disapproved, no new application for the same, or substantially the same, modification permit shall be filed within one year of the date of denial of the initial application unless the denial is made without prejudice.

20.93.060 Rights of Appeal

- A. Appeals. Decisions of the Zoning Administrator may be appealed to the Planning Commission and decisions of the Planning Commission may be appealed to the City Council.
- B. Procedures. Procedures for appeals shall be as prescribed by Chapter 20.95: Appeals.